

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
November 18, 2014

Town Hall
Meeting Room
7:00pm

Members Present: Don Williams, Dick Seely, Dave Robbins, Heather Hanson, Diane Lantz

Members Absent: None

Staff Present: Tim Gilbert, Brenda Belmonte

Guests: Tyler Mattison, Scott Mattison

Chair Williams addressed the board and the public:

Although this is a public meeting and is open for comment, it is not a public hearing.

The applicant has been ordered to remove farm animals from the residence at 509 County Route 64 and therefore has requested interpretation of the code relevant to farm animals in the R1 (Residential Moderate Density) zone.

Kenneth Mattison, owner of the property, has authorized Scott Mattison and Tyler Mattison to speak on his behalf in a notarized statement dated October 16, 2014.

Scott Mattison referred to the section of the code concerning 'animals for profit'. He believes that does not apply to his situation. His children belong to a 4H group and the animals are a part of their participation in that. Their property on County Route 64 has almost 2 acres. The goats are non-traditional pets, are smaller than most dogs in the neighborhood and are well taken care of. As for the chickens, Mattison said the eggs are used by the family; once the chickens no longer produce they are butchered and eaten. Whether the kids play with them or show them, in the end they are pets.

Robbins asked Mattison for clarification – at some point the chickens are eaten?

Mattison replied yes; there are five (5) goats and a handful of chickens. The children learn every aspect of the animals – what its use is and why. It is a great educational tool.

Tyler Mattison stated that the chickens are classified as pets when being shown. The participant needs to be able to hold them and point out specific areas, etc.

The board entered in Executive Session at 7:10pm

Chair Williams reconvened the meeting at 7:24pm and addressed the applicant;

The board has discussed and voted unanimously on the code interpretation. The decision has been

made to not allow farm animals in the R1 Zone. The board must adhere to Zoning Law which does not allow goats and chickens in an R1 district. The applicant is given 60 days to remove said animals.

RESOLUTION ZBA-2014-7
MATTISON CODE INTERPRETATION CHALLENGE
509 COUNTY ROUTE 64
Tax Parcel # 67.01-1-13

Resolution by: Robbins
Seconded by: Seely

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats received a written request from Kenneth Scott Mattison II, Owner's representative of tax parcel #67.01-1-13, for a request to challenge code enforcement officer Timothy C. Gilbert's interpretation of agricultural farm animals according to the Town of Big Flats Zoning Law; and,

WHEREAS, the code enforcement officer issued a violation September 17, 2014 for the raising of goats and chickens in a residential zone; and,

WHEREAS, the code enforcement officer submitted a staff report dated November 6, 2014 to the Zoning Board based upon his interpretation of the Zoning Law; and,

WHEREAS, the Zoning Board entered into an executive session for discussion; and

WHEREAS, the Zoning Board declares the proposed action to be a Type II action pursuant to SEQRR 6 NYCRR Part 617.5(c) (31) and therefore does not warrant an environmental review;

NOW THEREFORE BE IT RESOLVED, the Zoning Board of Appeals of the Town of Big Flats hereby supports code officer Gilbert's findings according to the staff report dated November 6, 2014 (attached as exhibit A), and orders the defendants to remove the (farm animals) goats and chickens within 60 days of this decision.

AYES: Seely, Robbins, Williams, Hanson, Lantz

NAYS:

ABSTAINED:

Dated: Tuesday, November 18, 2014
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Don Williams
Chairman, Zoning Board of Appeals

Town of Big Flats

Department of Code/Planning

Planning Staff Report

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Report developed for: Town of Big Flats Zoning Board of Appeals

Land Use Interpretation

Date: November 6, 2014

Re: Mattison Use Interpretation

Tax Parcel # 67.01-1-13

R1 District

Information/Background:

The code enforcement office received complaints that 509 County Rte 64 (please see supporting document #1) has been raising chickens and goats. This property is located wholly within the Residential (R1) zone (please see supporting document #2). These complaints came from a nearby resident and town board members. Several visits/drive bys showed no signs of any farm animals present on the property. However, a recent article was submitted to our office by a complainant, which indicated that 6 goats were being raised on the premises (see attached article). Forced to act, Officer Whispel and I further investigated. Our findings indicated that Goats and Chickens were in fact being raised on the property. Members of the family did admit that goats and chickens were present on the property, but they consider them pets.

State Environmental Quality Review:

SEQR Staff Recommendation:

In regards to SEQR, this action is a Type II administrative action. **617.5(c)(31) Therefore, no declaration is needed. *This should be stated***

Town of Big Flats Zoning Law

Section 17.60.030 Powers and Duties.

The zoning board of appeals shall have the following powers and duties:

- A. Appeals. The zoning board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the code enforcement officer, and that end shall have all the powers of the code enforcement officer.

Zoning Violation/ Interpretation:

(As per the code enforcement office)

Our office issued a zoning violation based on the Town of Big Flats Zoning law, specifically Chapter 17.12.010 Use requirement table.

****Officers**** Town of Big Flats Zoning Law/Code Review/Interpretation specific codes pertaining (in order reviewed) to the said violation is as follows:

Applicable references to Town Code with Staff Comments:

(The references to the Town Code are *merely* summaries and in no way inclusive. If uncertainty arises, refer to the appropriate section of the Town Code for clarification.)

I. 17.04.050 **Interpretation, separability and conflict.**

- A. The following rules of construction of language shall apply to the text of this title.
 - 2. Words used in the singular include the plural, and words used in the plural include the singular.
 - 5. The word “shall” is mandatory; the word “may” or “should” are permissive.
 - 6. The words “used” or “occupied” as applied to any lot or building shall be construed to include the words “intended, arranged or designed to be used or occupied”.
 - 9. Other words not defined above or in Section 17.04.060 shall be as defined in New York State Uniform Fire Prevention and Building Code or as used in their common meaning.
- B. If any section, subsection, paragraph, subdivision, sentence, clause, or provision of this title shall be held invalid, such invalidity shall apply only to the section, subsection, paragraph, subdivision, sentence, clause, or provision adjudicated invalid, and the remainder of this title shall remain valid and in full force and effect.
- C. This title shall be interpreted in such a way wherever possible so that the meaning of the words, phrases and subsections in this title shall make them consistent, valid and legal in effect.

II. 17.04.060 **Definition**

Agricultural activity means activity including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with *agricultural activities*.

Agri-business means, for sale, gain, or commercial purpose as a *principal use*, the: (The rest of this definition is not relevant in this circumstance).

Agricultural animal means the: (a) raising and gathering of agricultural animals products for sale, gain, or commercial purpose as a *principal use*, (b) incidental storage of feed or *agricultural animal* products raised on the same *lot* with such storage, and (c) the place of sale of those *agricultural animals* products raised on the same lot with such place of sale. As used in this definition, *agricultural animals* products consist of livestock, poultry, dairy cow, furbearing animals and bees, for sale, gain or commercial purposes. The term *agricultural animal* does not include *agri-business*, *commercial stable*, *factory farm*, *feedlot*, *kennel*, and *slaughterhouse*.

III. 17.08.040 **Use Districts.**

- B. Residential Moderate Density (R1) Intent. This *district* delineates those areas where predominantly *one-unit dwellings* are located, moderate *density* residential *development* has or is likely to occur, and it is necessary to protect the integrity of these residential areas by prohibiting the intrusion of any *use* that is not compatible with this predominant type and intensity of *use* exists.

IV. 17.12.010 **Use Requirement table**

*The land use table clearly excludes any type of agricultural use within a R1 (residential)

****Rural and Conservation districts are clearly set aside for agricultural purposes.**

*****The use designations table key specifically state "Blank-Not permitted in district". Please refer to use requirement table.**

****Detailed Interpretation as reviewed**:**

- The defendant is knowingly and willingly harboring several (poultry) chicken(s) and (furbearing animals) Goat(s) in a Residential Moderate Density (R1) jurisdiction. (17.08.040 B.)It is necessary to protect the integrity of these residential areas by prohibiting the intrusion of any *use* that is not compatible within this jurisdiction.
- Regardless of quantity, goats and chickens shall be viewed as *agricultural animal* (farm animals) according to the Town of Big Flats Zoning Law.
- In regards to the *term* Gain, (in accordance with 17.040.050 (A)9) it *shall* be reviewed with its common meaning, Merriam Webster something that is helpful-advantage or benefit -something wanted or valued that is gotten
 1. The defendant admits that when the chicken(s) can no longer produce eggs, they are slaughtered and consumed. The defendant also admits that chickens are used for show at 4-H, which is an organization commonly known for agricultural education. ****GAIN****
 2. The defendant admits that their several goat(s) are used for show at 4-H, which is an organization commonly known for agricultural education. ****GAIN****
 3. The defendant admits that the goats are not owned solely by the property owner, thus indicating that animal "Boarding" is taking place. "Boarding" is also a use not allowed within the Residential (R1) district. ****GAIN****
- The defendant argues that the chickens and goats should be considered pets, clearly inconsistent with the written intent of the Town of Big Flats Zoning Laws.
- A similar violation documented in 2003 demonstrates consistency with code department findings.
*Please see supporting document #3 *

ZBA Staff Recommendation:

Staff recommends the board support my findings, and request that the defendant remediate the existing violation and remove all of the chickens and goats. The board should consider the entire R1 zone in regards to its decision and finding.

Cordially,

Timothy C Gilbert
Town of Big Flats
Code Enforcement Officer

Motion by Seely, seconded by Robbins to adjourn at 7:26pm, Discussion, None, Motion Carries 5-0.

Meeting adjourned at 7:27pm.